

# SPOTLIGHT ON SPEECH CODES 2010

THE STATE OF FREE SPEECH ON OUR NATION'S CAMPUSES



FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION



The mission of FIRE is to defend and sustain individual rights at America’s colleges and universities. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience —the essential qualities of individual liberty and dignity. FIRE’s core mission is to protect the unprotected and to educate the public and communities of concerned Americans about the threats to these rights on our campuses and about the means to preserve them.

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“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’ The college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas,’ and we break no new constitutional ground in reaffirming this Nation’s dedication to safeguarding academic freedom.”

—*HEALY V. JAMES*, 408 U.S. 169, 180–181 (1972) (INTERNAL CITATIONS OMITTED)



# Introduction

Each year, the Foundation for Individual Rights in Education (FIRE) conducts a rigorous survey of restrictions on speech at America's colleges and universities. The survey and resulting report explore the extent to which schools are meeting their legal and moral obligations to uphold students' and faculty members' rights to freedom of speech, freedom of expression, and private conscience.

As in past years, this year's report finds that the majority of institutions are failing to meet these obligations. However, for the second year in a row, FIRE found a decline in the percentage of institutions that maintain policies that clearly and substantially prohibit constitutionally protected expression. The decline was particularly marked at public universities, which are legally bound to protect students' and faculty members' First Amendment rights. This is exciting news.

This year's report—*Spotlight on Speech Codes 2010: The State of Free Speech on Our Nation's Campuses*—examines the restrictions on speech that are in force at a large sample of American colleges and universities and identifies emergent trends within the data. The report also addresses recent developments regarding free speech in the university setting, drawing from FIRE's research on university policies and from cases that FIRE has handled over the past academic year.

As always, some of the restrictions on speech that FIRE has discovered

would be laughable if they were not such serious violations of the right to free speech. Some highlights from this year's research include:

- New York University prohibits “insulting, teasing, mocking, degrading or ridiculing another person or group.”<sup>1</sup>
- Keene State College in New Hampshire prohibits any “language that is sexist and promotes negative stereotypes and demeans members of our community.”<sup>2</sup>
- Southwest Minnesota State University vaguely prohibits speech “which attempts to demean or devalue a person's inherent worth and human dignity.”<sup>3</sup>

FIRE hopes that by exposing the magnitude of the threat to free speech on the American college campus, we will draw increased public attention to the problem and inspire solutions. After all, public scrutiny is perhaps the greatest weapon against these abuses. As Justice Louis Brandeis famously wrote, “Sunlight is said to be the best of disinfectants.”

<sup>1</sup> *New York University Anti-Harassment Policy and Complaint Procedures*, available at <http://www.nyu.edu/eo/anti-harass-policy.pdf>. Because university policies—or, more frequently, just the URLs for those policies—change on a regular basis, copies of all policies cited in this report are also available at <https://www.thefire.org/index.php/article/11349.html>, and were current as of September 31, 2009.

<sup>2</sup> “Statement on Sexist Language,” *Keene State College Student Handbook*, available at <http://www.keene.edu/handbook/rights.cfm>

<sup>3</sup> “Prohibited Code of Conduct,” Office of Judicial Affairs, available at <http://www.smsu.edu/CampusLife/JudicialAffairs/Index.cfm?Id=2727>

# Methodology

FIRE surveyed publicly available policies at institutions ranked among the top 100 “Best National Universities” and the top 50 “Best Liberal Arts Colleges,” as rated in the 2008 “America’s Best Colleges” issue of *U.S. News & World Report*. FIRE also surveyed an additional 222 major public universities. Our research focuses in particular on public universities because, as explained in detail later in this report, public universities are legally bound to protect students’ right to free speech.

FIRE rates colleges and universities as “red light,” “yellow light,” or “green light” based on how much, if any, protected speech their written policies restrict. FIRE defines these terms as follows:

<sup>4</sup> Connecticut College and Edinboro University of Pennsylvania.

<sup>5</sup> For example, in 2004, the U.S. Court of Appeals for the Third Circuit found that a state law banning advertisers from paying to place advertisements for alcoholic beverages in university newspapers was unconstitutional. *Pitt News v. Pappert*, 379 F.3d 96 (3d Cir. 2004).

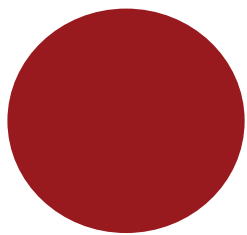
<sup>6</sup> FIRE rated the following institutions as “green light”: Carnegie Mellon University, Cleveland State University, Dartmouth College, Grinnell College, Shippensburg University of Pennsylvania, The College of William & Mary, University of Nebraska-Lincoln, University of Pennsylvania, University of South Dakota, University of Tennessee-Knoxville, and University of Utah.

<sup>7</sup> This year, the “Not Rated” list contains two public institutions: the U.S. Military Academy and the U.S. Naval Academy, both of which were named in *U.S. News & World Report*’s list of the top 50 liberal arts colleges. Although these institutions are public, the First Amendment does not apply in the military as it does in civilian society. Rather, the U.S. Supreme Court has held:

The military need not encourage debate or tolerate protest to the extent that such tolerance is required of the civilian state by the First Amendment; to accomplish its mission the military must foster instinctive obedience, unity, commitment, and esprit de corps. The essence of military service ‘is the subordination of the desires and interests of the individual to the needs of the service.’

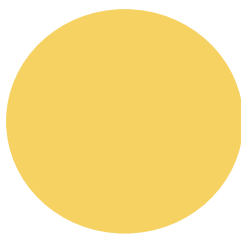
*Goldman v. Weinberger*, 475 U.S. 503, 507 (1986) (internal citations omitted). Therefore, since these institutions do not promise their students full freedom of speech and, like private universities, are not obligated to do so, FIRE has designated them as “Not Rated.”



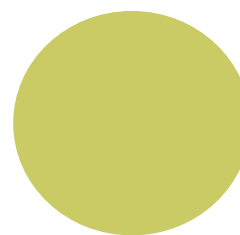


**Red Light:** A “red-light” institution is one that has at least one policy that both clearly and substantially restricts freedom of speech, or that bars public access to its speech-related policies by requiring a university login and password for access. A “clear” restriction is one that unambiguously infringes on protected expression. In other words, the threat to free speech at a red-light institution is obvious on the face of the policy and does not depend on how the policy is applied. A “substantial” restriction on free speech is one that is broadly applicable to important categories of campus expression. For example, a ban on “offensive speech” would be a clear violation (in that it is unambiguous) as well as a substantial violation (in that it covers a great deal of what would be protected expression in the larger society). Such a policy would earn a university a red light.

When a university restricts access to its speech-related policies by requiring a login and password, it denies prospective students and their parents the ability to discover and weigh this crucial information. At FIRE, we consider this action by a university to be deceptive and serious enough that it alone warrants a “red-light” rating. We have had to update our rating criteria to reflect this, as FIRE has only begun to see this trend emerge over the past year. In this year’s report, two institutions are rated “red light” for maintaining password protection on speech-related policies.<sup>4</sup>



**Yellow Light:** A “yellow-light” institution maintains policies that could be interpreted to suppress protected speech or policies that, while restricting freedom of speech, restrict only narrow categories of speech. For example, a policy banning “verbal abuse” has broad applicability and poses a substantial threat to free speech, but is not a clear violation because “abuse” might refer to unprotected speech, such as threats of violence or genuine harassment. Similarly, while a policy banning “posters promoting alcohol consumption” clearly restricts speech, it is limited in scope. Yellow-light policies may be unconstitutional,<sup>5</sup> and a rating of yellow rather than red in no way means that FIRE condones a university’s restrictions on speech. Rather, it means that, in FIRE’s judgment, those restrictions do not clearly and substantially limit speech in the manner necessary to warrant a red light.



**Green Light:** If FIRE finds no policies that seriously imperil speech, a college or university receives a “green light.” A green light does not indicate that a school actively supports free expression. It simply means that FIRE has not found any publicly available written policies violating students’ free speech rights on that campus.<sup>6</sup>

**Not Rated:** When a private university<sup>7</sup> states clearly and consistently that it holds a certain set of values above a commitment to freedom of speech, FIRE does not rate that university.<sup>8</sup> Of the 375 schools surveyed in this report, FIRE rates 367 schools as red, yellow, or green light, and has not rated 8 schools.<sup>9</sup>

<sup>4</sup> For example, Worcester Polytechnic Institute (WPI) makes clear in its policies that students entering WPI are not guaranteed robust free speech rights. In particular, WPI’s student code of conduct explicitly states:

The WPI community recognizes that membership in this particular academic community is freely sought and freely granted by and to its members, and that within this membership group certain specific behaviors that may be accepted by society in general cannot be accepted within an academic community without hindering the explicit goals of that academic community.

An additional statement by the university’s Trustees states:

Students enter WPI voluntarily. . . . If they do not like some of the rules, regulations, traditions, and policies of WPI, they do not have to enter. But let it be understood that having been accepted and having decided to enter, they are expected to abide by the laws of our nation and comply with rules and policies of WPI.

It would be clear to anyone reading WPI’s policies that they were not entitled to unfettered free speech at WPI.

<sup>9</sup> FIRE has not rated the following schools: Bard College, Baylor University, Pepperdine University, Saint Louis University, the U.S. Military Academy, the U.S. Naval Academy, Worcester Polytechnic Institute, and Yeshiva University. (Brigham Young University, which in the past has appeared in this report as a “Not-Rated” institution, was not among the private universities rated in the Top 100 National Universities or Top 50 Liberal Arts Colleges, and thus is not included in this year’s report.)

# Findings

**Of the 375 schools reviewed by FIRE, 266 received a red-light rating (71%), 90 received a yellow-light rating (24%), and 11 received a green-light rating (3%). FIRE did not rate 8 schools (2%).<sup>10</sup> (See Figure 1.)**

For the second year in a row, the percentage of public schools with a red-light rating has declined. Two years ago, 79% of public schools received a red-light rating; last year, that number declined to 77%; this year, that number has declined more sharply to 71%. This trend is a positive indicator that more public universities are beginning to take seriously their legal obligation to uphold the First Amendment rights of their students and faculty.

Unfortunately, the data shows an increase in the percentage of private universities earning a red-light rating. Last year, the figure was 67%; this year, it is 70%. While private universities are not legally bound by the First Amendment, most make extensive promises of free speech to their students and faculty. Speech codes impermissibly violate those promises.

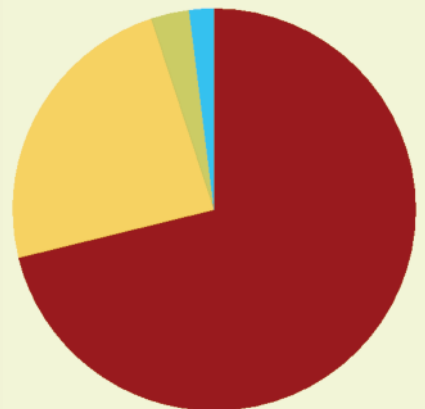
Of the schools reviewed by FIRE over the past year, 102 were private and 273 were public. Of the private schools reviewed, 70% received a red-light rating, 20% received a yellow-light rating, 4% received a green-light rating, and 6% were not rated. (See Figure 2.)

Of public schools reviewed, 71% received a red-light rating, 25% received a yellow-light rating, and 3% received a green-light rating. One percent were not rated. (See Figure 3.)

This report also divides the United States into four geographic regions: the Northeast, the Midwest, the South, and the West.<sup>11</sup> While the high percentage of red-light schools in each region suggests that the problem of speech codes is national in scope rather than confined to one area of the country, there is some geographic variation. The percentage of institutions having red-light speech codes varied from 67% in the West to 73% in the Midwest. The West had the highest percentage of yellow-light institutions (30%). The Midwest had not only the highest percentage of red-light institutions, but also the highest percentage of green-light institutions (5%).

The data also shows a relationship between enrollment levels and restric-

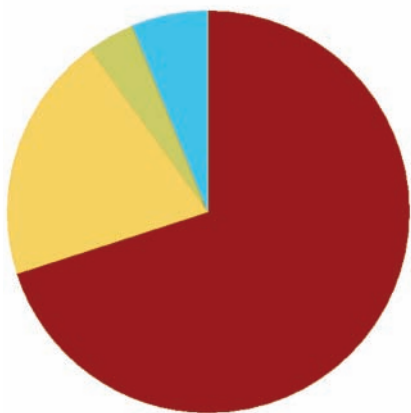
tions on speech.<sup>12</sup> Among schools with a total enrollment of less than 10,000 students, 68% received a red-light rating. Among schools with an enrollment of between 10,000 and 20,000 students, 71% were rated as red-light institutions, while 74.6% of schools with an enrollment of between 20,000 and 30,000 students received a red-light rating. Finally, 77% of schools with a total enrollment of over 30,000 students were rated as red-light institutions. (See Figure 4.) FIRE surveyed 39 universities with an enrollment of over 30,000 students, 30 of which received a red-light rating. The total enrollment at those 30 schools alone is 1,521,572 students. These figures reveal that a striking number of students are affected by unconstitutional speech codes; the total number of students enrolled at red-light institutions is 3,921,769.



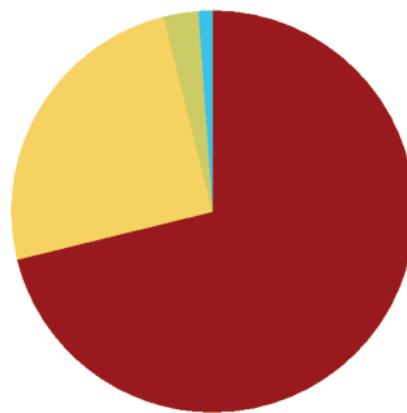
**Figure 1: All Schools by Rating**  
71% Red, 24% Yellow, 3% Green, 2% NR



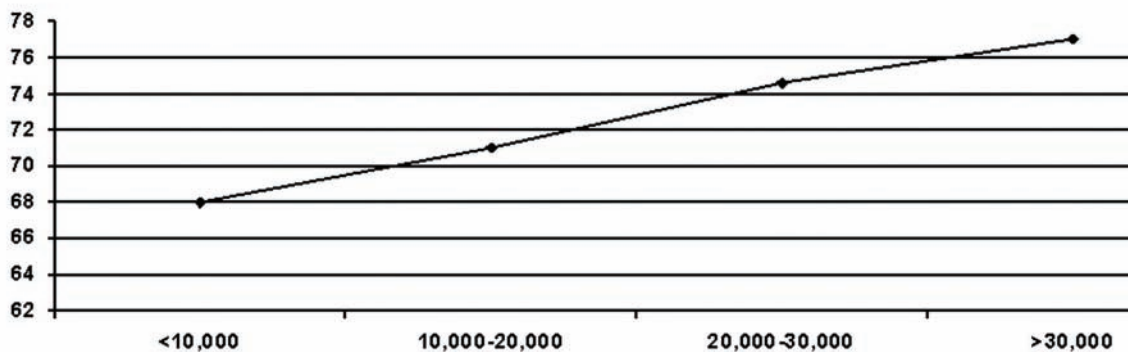
## NATIONAL COLLEGE AND UNIVERSITY RATINGS



**Figure 2:** Speech Codes at Private Colleges and Universities  
70% Red, 20% Yellow, 4% Green, 6% NR



**Figure 3:** Speech Codes at Public Colleges and Universities  
71% Red, 25% Yellow, 3% Green, 1% NR



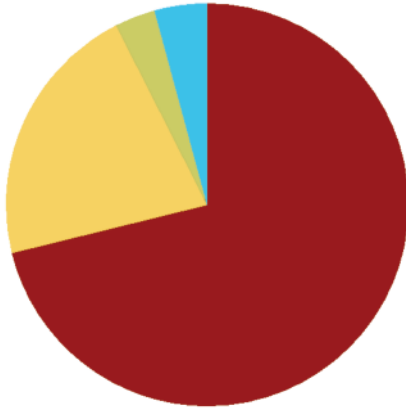
**Figure 4:** Percentage of Red-Light Schools by Enrollment

<sup>10</sup> See Appendix B for a full list of schools by rating.

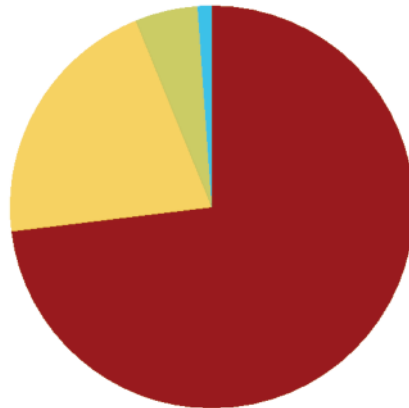
<sup>11</sup> See Appendix A for a list of the U.S. states in each geographic region.

<sup>12</sup> Enrollment data was obtained from college profiles available at <http://www.collegeboard.com>, except in several instances where those profiles excluded graduate enrollment, in which case the data was obtained from college profiles available at <http://en.wikipedia.org>. Where applicable, enrollment figures include both undergraduate and graduate enrollment.

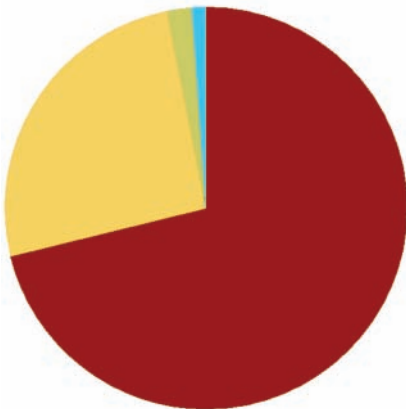
## REGIONAL COLLEGE AND UNIVERSITY RATINGS



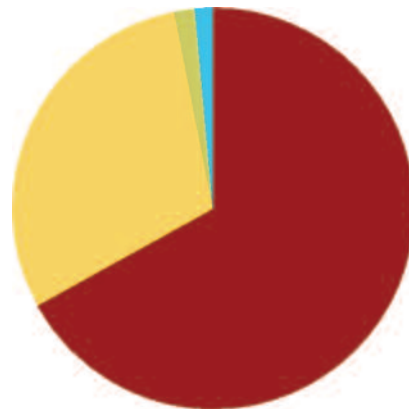
**Figure 5:** Speech Codes at Northeastern Colleges and Universities  
71.2% Red, 21.2% Yellow, 3.4% Green, 4.2% NR



**Figure 6:** Speech Codes at Midwestern Colleges and Universities  
73% Red, 21% Yellow, 5% Green, 1% NR



**Figure 7:** Speech Codes at Southern Colleges and Universities  
71% Red, 26% Yellow, 2% Green, 1% NR



**Figure 8:** Speech Codes at Western Colleges and Universities  
67% Red, 30% Yellow, 1.5% Green, 1.5% NR

# Discussion

## SPEECH CODES ON CAMPUS: BACKGROUND AND LEGAL CHALLENGES

Speech codes—**university regulations prohibiting expression that would be constitutionally protected in society at large**—gained popularity with college administrators in the 1980s and 1990s. As discriminatory barriers to education declined, female and minority enrollment increased. Concerned that these changes would cause tension and that students who finally had full educational access would arrive at institutions only to be hurt and offended by other students, college administrators enacted speech codes.

In doing so, however, administrators ignored or did not consider the legal ramifications of placing unconstitutional restrictions on speech, particularly at public universities. As a result, federal courts have overturned speech codes at numerous colleges and universities over the past two decades, including one just this year in the Los Angeles Community College District (LACCD).

LACCD student Jonathan Lopez filed a federal lawsuit against the college after his professor refused to grade a speech Lopez gave—in a public speaking class—involving his Christian faith. The professor instead instructed Lopez to “ask God what your grade is.” In his suit, Lopez challenged the constitutionality of

LACCD’s speech code, which included prohibitions on “[d]isparaging sexual remarks about your gender” and “actions and behavior that convey insulting, intrusive or degrading attitudes/comments about women or men.”<sup>13</sup> In light of the incident in his speech class, Lopez was concerned that expression of his religiously based views on gender and sexual orientation might run afoul of this policy.

In July 2009, the district court issued an opinion enjoining LACCD from enforcing its speech code.<sup>14</sup> The court stated that the policy “prohibits a substantial amount of protected free speech,” including “constitutionally protected free speech that is merely offensive to some listeners, such as discussions of religion, homosexual relations and marriage, sexual morality and freedom, or even gender politics and policies.”<sup>15</sup>

The college filed a motion asking the court to reconsider the decision, which the court denied on September 16, 2009. One of the college’s arguments for reconsideration was that much of the policy language the court invalidated came directly from Equal Employment Opportunity Commission (EEOC) statutes prohibiting workplace harassment. The court roundly rejected this argument,

which is of particular significance since numerous colleges and universities maintain harassment policies that directly borrow language from EEOC statutes. In its opinion denying the request for reconsideration, the court explicitly stated that “college students possess broader First Amendment rights” than employees in the workplace, and that the fact “that regulations might be permissible in the employment context does not necessarily dictate a like result in the college setting.”<sup>16</sup>

The Lopez decision is just the latest in an unbroken string of federal court decisions holding college and university speech codes unconstitutional.<sup>17</sup> Despite this and other clear legal precedent, however, the majority of institutions—including some of those that have been successfully sued—still maintain unconstitutional speech codes.<sup>18</sup> It is with this in mind that we turn to a more detailed discussion of the ways in which campus speech codes violate individual rights and what can be done to challenge them.

**Federal courts have overturned speech codes at numerous colleges and universities over the past two decades.**

<sup>13</sup> *Lopez v. Candaele*, Civ. No. 09-0995 (C.D. Cal. Jul. 10, 2009).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Lopez v. Candaele*, Civ. No. 09-0995 (C.D. Cal. Sep. 16, 2009).

## PUBLIC UNIVERSITIES VS. PRIVATE UNIVERSITIES

The First Amendment prohibits the government—including governmental entities such as state universities—from interfering with freedom of speech. A good rule of thumb is that if a state law would be declared unconstitutional for violating the First Amendment, a similar regulation at a state college or university is equally unconstitutional.

The guarantees of the First Amendment generally do not apply to students at private colleges because the First Amendment regulates only government—not private—conduct.<sup>19</sup>

Moreover, although acceptance of federal funding does confer some obligations upon private colleges, compliance with the First Amendment is not one of them. This does not mean, however, that students and faculty members at private schools are not entitled to free expression. In fact, most private universities explicitly promise freedom of speech and academic freedom, presumably to lure the most talented students and faculty, since most people would not want to study or teach where they could not speak and write freely. For example, George Washington Univer-

sity states that it “is committed to the protection of free speech, the freedom of assembly, and the safeguarding of the right of lawful protest on campus.”<sup>20</sup> Harvard University proclaims that “[f]ree speech is uniquely important to the University,” and that “because no other community defines itself so much in terms of knowledge, few others place such a high priority on freedom of speech.”<sup>21</sup> Yet both of these universities prohibit a great deal of speech that the First Amendment would protect elsewhere.



<sup>17</sup> *DeJohn v. Temple University*, 537 F.3d 301 (3d Cir. 2008); *Dambrot v. Cen. Mich Univ.*, 55 F.3d 1177 (6th Cir. 1995); *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007); *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004); *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357 (M.D. Pa. 2003); *Booher v. N Ky. Univ Bd. of Regents*, No. 2:96-CV-135, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. July 21, 1998); *UWM Post, Inc. v. Bd. of Regents*, 774 F. Supp. 1163 (E.D. Wisc. 1991); *Doe v. Univ of Mich.*, 721 F. Supp. 852 (E.D. Mich. 1989). In addition, several institutions have voluntarily rescinded their speech codes as part of settlement agreements.

<sup>18</sup> Several universities that have been the subject of successful speech-code lawsuits—such as the University of Michigan and the University of Wisconsin—have revised the unconstitutional policies challenged in court but still maintain other, equally unconstitutional, policies.

<sup>19</sup> Although the First Amendment does not regulate private universities, this does not mean that all private universities are legally free to restrict their students’ free speech rights. For example, California’s “Leonard Law,” Cal. Educ. Code § 94367, prohibits secular private colleges and universities in California from restricting speech that would otherwise be constitutionally protected. The Leonard Law provides, in relevant part:

No private postsecondary educational institution shall make or enforce any rule subjecting any student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus or facility of a private postsecondary institution, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution.

<sup>20</sup> “Pamphlets, Petitions and Demonstrations,” *Guide to Student Rights and Responsibilities 2009-2010*, available at <http://gwired.gwu.edu/osjs/merlin-cgi/p/downloadFile/d/23207/n/off/other/1/name/2009-2010GuideStudentRights-FINAL.pdf/>

<sup>21</sup> “Free Speech Guidelines,” *Rights, Rules, Responsibilities*, available at <https://www.fas.harvard.edu/~secfas/public/FreeSpeech.html>

# Spotlight On: Security Fees for Controversial Speakers

Over the past year, FIRE has seen a number of colleges and universities attempt to discourage the invitation of controversial speakers by levying additional security costs on the sponsoring student organizations. This is a clear violation of the right to free speech: any requirement that students or student organizations hosting controversial events pay for extra security is unconstitutional because it affixes a price tag to events on the basis of their expressive content. The U.S. Supreme Court addressed this exact issue in *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992), when it struck down an ordinance in Georgia that permitted the local government to set varying fees for events based upon how much police protection the event would need. Criticizing the ordinance, the Court wrote that “[t]he fee assessed will depend on the administrator’s measure of the amount of hostility likely to be created by the speech based on its content. Those wishing to express views unpopular with bottle throwers, for example, may have to pay more for their permit.” Deciding that such a determination required county administrators to “examine the content of the message that is conveyed,” the Court wrote that “[l]isteners’ reaction to speech is not a content-neutral basis for regulation. ... **Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.**” (Emphasis added.)

Despite the clarity of the law on this issue, the impermissible use of security

fees to burden controversial speech is all too common on university campuses. Some universities actually codify the practice in their speech codes. For example:

- At Middlebury College in Vermont, “[s]tudent organizations bear full responsibility for arranging and financing any Department of Public Safety provisions that may be necessary in connection with controversial speakers.”<sup>1</sup>
- At the University of Arkansas, if the university police determine that extra security is necessary for an event, “such costs shall be the responsibility of the event organizer as a condition of approval of the reservation, along with any other required costs.”<sup>2</sup>

Over the past year, FIRE intervened at several universities where student organizations were assessed additional security costs for hosting controversial speakers on campus. In February 2009, members of the Objectivist Club of Berkeley (OCB) were faced with a \$3,000 security fee to host a controversial speech about the Arab-Israeli conflict. OCB’s president was told by the UC Berkeley Police Department that uniformed officers would be required for the event because of the subject matter of the presentation and previous tension between Israeli and Palestinian student groups—a cost estimated at \$3,220.63.<sup>3</sup>

Also in February 2009, the University of Massachusetts Amherst police department charged the university’s Republi-

can Club over \$400 in security fees after a large group of students invited people to protest at a speech by columnist Don Feder that the club was hosting.<sup>4</sup>

In March 2009, the University of Colorado–Boulder threatened to bill the organizers of an event featuring speeches by William Ayers and Ward Churchill more than \$2,000 for security, partly on the basis of a potentially hostile audience reaction to the speakers.<sup>5</sup>

In April 2009, the College Republicans at the University of Arizona sponsored a speech by conservative activist David Horowitz. Several days before the event, the university informed the group’s president that if the College Republicans did not request two university police officers for security at the event, the event would be cancelled. The College Republicans agreed to the demand and, after the event, were billed over \$300 in security costs for the officers. The university police explicitly acknowledged in an e-mail to the group that extra security—at the group’s expense—would be necessary for any future events that involved “someone who may be controversial.”<sup>6</sup>

In the face of public criticism, all of these institutions ultimately refunded or withdrew the unlawful security fees. However, it is important for public institutions nationwide to recognize that they may not, through their policies or practices, burden those who wish to host controversial speakers with extra security costs.

<sup>1</sup> “Student Organization Policies,” *Middlebury College Handbook*, available at [http://www.middlebury.edu/about/handbook/residential/ii\\_a\\_student+organizations.htm](http://www.middlebury.edu/about/handbook/residential/ii_a_student+organizations.htm)

<sup>2</sup> “Use of University Facilities and Outdoor Space,” available at <http://vcfa.uark.edu/Documents/7080.pdf>

<sup>3</sup> E-mail from Officer John Lechmanik to the Berkeley Objectivists Club, February 5, 2009, available at <http://www.thefire.org/index.php/article/10325.html>

<sup>4</sup> Letter from Adam Kissel to University of Massachusetts Chancellor Robert C. Holub, March 24, 2009, available at <http://www.thefire.org/index.php/article/10434.html>

<sup>5</sup> Christin Ayers, “Students in Standoff with CU Over Ayers, Churchill Event,” *ABC7 Denver*, March 3, 2009, available at <http://www.thefire.org/index.php/article/10326.html>

<sup>6</sup> E-mail to College Republicans from Angelica Yrigoyen, June 8, 2009, available at <http://www.thefire.org/article/10824.html>



## WHAT EXACTLY IS ‘FREE SPEECH,’ AND HOW DO UNIVERSITIES CURTAIL IT?

What does FIRE mean when we say that a university restricts “free speech”? Do people have the right to say absolutely anything, or are only certain types of speech “free”?

Simply put, the overwhelming majority of speech is protected by the First Amendment. Over the years, the Supreme Court has carved out some narrow exceptions: speech that incites reasonable people to immediate violence; fighting words (one-on-one, face-to-face confrontations that lead to physical altercations); harassment; true threats; intimidation; obscenity; and libel. If the speech in question does not fall within one of these exceptions, it most likely is protected speech.

Universities often misuse these exceptions to punish constitutionally protected speech. These are instances where a written policy may be constitutional—for example, a prohibition on “incitement”—but its application is not. Therefore, it is important to understand what these narrow exceptions to free speech actually mean in order to recognize when they are being misapplied.

### *Threats & Intimidation*

Since the tragic Virginia Tech shootings in 2007, FIRE has noticed an increased trend among universities to use otherwise legitimate prohibitions on “threats” to punish constitutionally protected speech.

The Supreme Court has defined “true threats” as only “those statements where the speaker means to communicate a serious expression of an in-

tent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). The Court also has defined “intimidation,” in the constitutionally proscribable sense, as a “type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Id.* at 360. Thus, neither term would encompass, for example, a vaguely worded statement that is not directed toward anyone in particular.

Nevertheless, universities have misapplied policies prohibiting threats and intimidation to infringe on protected speech. In October 2008, for example, officials at Lone Star College in Texas banned the student group Young Conservatives of Texas (YCT) from distributing a humorous “Top Ten Gun Safety Tips” flyer,<sup>22</sup> and even threatened to disband the group or put it on probation for a year because of the flyer. YCT distributed the flyers as part of the school’s “club rush,” an event where student groups attempt to recruit new members. The flyer

featured satirical “gun safety tips,” such as “If your gun misfires, never look down the barrel to inspect it”; “Always keep your gun pointed in a safe direction, such as at a Hippy or a Communist”; and “No matter how excited you are about buying your first gun, do not run around yelling ‘I have a gun! I have a gun!’” The flyer also invited students to the club’s informational meeting the following week.

FIRE wrote to the college after learning of its efforts to censor the student group.<sup>23</sup> In response, FIRE received an e-mail from the college’s General Counsel stating that any “mention of firearms and weapons” is inherently a “material interference with the operation of the school or the rights of others” because such language “brings fear and concern to students, faculty and staff.” The General Counsel also stated that “the tragedy of Virginia Tech cannot be underestimated when it comes to speech relating to firearms—however ‘satirical and humorous’ the speech may be perceived by some.”<sup>24</sup>





## Incitement

FIRE also has noticed an increased propensity among university administrations to restrict speech that deeply offends other students on the basis that it constitutes “incitement.” The basic concept, as administrators see it, is that offensive or provocative speech will anger those who disagree with it, perhaps so much that it moves them to violence. While preventing violence is an admirable goal, this is an impermissible misapplication of the incitement doctrine.

Incitement, in the legal sense, does not refer to speech that may lead to violence on the part of those opposed to or angered by it, but rather to speech that will lead those who agree with it to commit immediate violence. In other words, the danger is that certain speech will convince listeners who agree with it to take immediate unlawful action. To apply the doctrine to an opposing party’s reaction to speech is to essentially convert the doctrine into an impermissible “heckler’s veto,” whereby anyone who shows strong offense can shut down the expression he or she dislikes by threatening violence.

The precise standard for incitement to violence is found in the Supreme Court’s decision in *Brandenburg v. Ohio*, 395 U.S. 444 (1969). There, the Court held that the state may not “forbid or proscribe advocacy of the use of force or of law violation except

where such advocacy is directed to inciting or producing *imminent* lawless action and is likely to incite or produce such action.” 395 U.S. at 447 (emphasis in original). This is an exacting standard, as evidenced by its application in subsequent cases. For instance, the Supreme Court held in *Hess v. Indiana*, 414 U.S. 105 (1973), that a man who had loudly stated, “We’ll take the fucking street later” during an anti-war demonstration did not intend to incite or produce immediate lawless action (the Court found that, “at worst, it amounted to nothing more than advocacy of illegal action at some indefinite future time”), and was therefore not guilty under a state disorderly conduct statute. 414 U.S. at 108–09. The fact that the

## Simply put, the overwhelming majority of speech is protected by the First Amendment.

Court ruled in favor of the speaker despite the use of such strong and unequivocal language underscores the narrow construction that has traditionally been given to the incitement doctrine and its requirements of likelihood and immediacy. Nonetheless, college administrations have been all too willing to ignore this jurisprudence.

## Obscenity

Universities frequently misuse prohibitions on “obscenity” to punish protected speech. Like “incitement,” obscenity has a very specific legal

meaning. The Supreme Court has held that obscene expression, to fall outside of the protection of the First Amendment, must “depict or describe sexual conduct” and must be “limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.” *Miller v. California*, 413 U.S. 15 (1973). This is a narrow definition applicable only to some highly graphic sexual material. Many colleges, by contrast, prohibit such things as “obscene language,” by which they presumably mean swear words. But the Supreme Court has explicitly held that most such language

is constitutionally protected. In *Cohen v. California*, 403 U.S. 15 (1971), the defendant, Cohen, had been convicted in California for wearing a jacket bearing the words “Fuck the Draft” into a courthouse. The Court overturned Cohen’s conviction, holding that the message on his jacket, however vulgar, was protected speech.

Having discussed the most common ways in which universities misuse *legitimate* regulations to prohibit free expression, we turn to the innumerable *illegitimate* university regulations that restrict free speech and expression on their face. Such restrictions

<sup>22</sup> Young Conservatives of Texas’ Flyer on “Top Ten Gun Safety Tips,” available at <http://www.thefire.org/index.php/article/9813.html>

<sup>23</sup> FIRE Letter to Lone Star College-Tomball President Raymond Hawkins, September 26, 2008, available at <http://www.thefire.org/index.php/article/9814.html>

<sup>24</sup> E-mail to FIRE from Lone Star College System General Counsel Brian Nelson, October 14, 2008, available at <http://www.thefire.org/index.php/article/9815.html>

## Discussion [continued]

are generally found in several distinct types of policies.

### Harassment Policies

Actual harassment is not protected by the First Amendment. In the educational context, the Supreme Court has defined student-on-student harassment as conduct “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999). This is conduct far beyond the dirty joke or “offensive” op-ed that is often called “harassment” on today’s college campuses. Harassment is extreme and usually repetitive behavior—behavior so serious that it would interfere with a reasonable person’s ability to receive his or her education. For example, in *Davis*, the conduct found by the Court to be harassment was a months-long pattern of behavior including repeated attempts to touch the victim’s breasts and genitals and repeated sexually explicit comments directed at and about the victim.

Universities are legally obligated to maintain policies and practices aimed at preventing this type of genuine harassment from happening on their campuses. Unfortunately, they often misuse this obligation by punishing protected speech that absolutely is not harassment. By 2003, this misuse of harassment regulations had become so widespread that the federal

By 2003, misuse of harassment regulations had become so widespread that the federal Department of Education’s Office for Civil Rights (OCR)—the agency responsible for the enforcement of federal harassment regulations in schools—issued a letter of clarification to all of America’s colleges and universities.

Department of Education’s Office for Civil Rights (OCR)—the agency responsible for the enforcement of federal harassment regulations in schools—issued a letter of clarification to all of America’s colleges and universities.<sup>25</sup> Then–Assistant Secretary of Education Gerald Reynolds wrote:

***Some colleges and universities have interpreted OCR’s prohibition of ‘harassment’ as encompassing all offensive speech regarding sex, disability, race or other classifications. Harassment, however, to be prohibited by the statutes within OCR’s jurisdiction, must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive.***

Reynolds went on to write that “OCR’s regulations are not intended to restrict the exercise of any expressive activities protected under the U.S. Constitution,” and concluded that “[t]here is no conflict between the civil rights laws that this Office enforces and the civil liberties guaranteed by the First Amendment.” This

letter forecloses any argument that federal anti-harassment law requires colleges to adopt speech codes that violate the First Amendment. In spite of this clarification, however, hundreds of universities persist in maintaining ludicrously broad definitions of harassment that include large amounts of constitutionally protected speech. Examples include:

- Northern Illinois University defines harassment as the “[i]ntentional and wrongful use of words, gestures and actions to **annoy**, alarm, abuse, **embarrass**, coerce, intimidate or threaten another person.” (Emphasis added.)<sup>26</sup>
- At East Stroudsburg University of Pennsylvania, harassment includes any “negative or offensive comments, jokes, suggestions, or gestures directed to an individual’s or group’s race, ethnicity or national origin.”<sup>27</sup>

These examples, along with many others, demonstrate that colleges and universities often fail to limit themselves to the narrow definition

<sup>25</sup> “First Amendment: Dear Colleague” Letter, July 28, 2003, available at <http://www.ed.gov/about/offices/list/ocr/firstamend.html>

<sup>26</sup> “Harassment,” *The Student Code of Conduct*, available at [http://www.niu.edu/judicial/Code\\_of\\_Conduct.pdf](http://www.niu.edu/judicial/Code_of_Conduct.pdf)

<sup>27</sup> “Discrimination and Harassment [sic] Policy,” available at [http://www4.esu.edu/aboutesu/diversity/discrim\\_policy.cfm](http://www4.esu.edu/aboutesu/diversity/discrim_policy.cfm)



of harassment that is outside the realm of constitutional protection. Instead, they expand the term to prohibit broad categories of speech that do not even *approach* actual harassment, despite many such policies having been struck down by federal courts.<sup>28</sup> These vague and overly broad harassment policies deprive students and faculty of their free speech rights.

### *Policies on Tolerance, Respect, and Civility*

Many schools invoke laudable goals like tolerance and civility to justify policies that violate students' free speech rights. While a university has every right to actively promote a tolerant and respectful atmosphere on campus, a university that claims to respect free speech must not limit speech to only the inoffensive and agreeable.

Here are just two examples of restrictive policies on tolerance, respect,

and civility from the past year:

- Marshall University in West Virginia prohibits “incivility or disrespect of persons.”<sup>29</sup>
- At California State University–San Bernardino, students in the residence halls can be disciplined for “Failure to show respect for community members.”<sup>30</sup>

### *Internet Usage Policies*

A great deal of student expression now takes place online, whether over e-mail or on social networking sites like Facebook.com. Numerous universities maintain policies—many of which were originally written before the Internet became one of students' primary methods of communication—severely restricting the content of online expression.

FIRE frequently sees universities maintaining overly restrictive Internet

usage policies and punishing students and faculty members for constitutionally protected speech online.

For example, in December 2008, Michigan State University (MSU) student government leader Kara Spencer was found guilty of “spamming” and misuse of university resources after she criticized the MSU administration's plan to change the school calendar. In August 2008, the MSU administration had announced controversial plans to shorten the school's academic calendar and freshman orientation schedule, and had sought comment on the matter. The University Committee on Student Affairs (UCSA), of which Spencer was a member, met in September to construct a formal response to the proposed changes. Spencer carefully selected 391 faculty members—roughly eight percent of MSU's faculty—and e-mailed them her version of UCSA's letter, encouraging them to express their views about the changes. Spencer's e-mail argued that the proposed calendar changes would “greatly affect both faculty and students” and called for “an inclusive dialogue among members of the University community” prior to their adoption.<sup>31</sup>

Within days of sending her e-mail, Spencer was charged with violating as many as five MSU policies—including the university's Network Acceptable Use Policy—for sending what the university deemed “spam.”<sup>32</sup> According to MSU's bulk e-mail policy at the time, “spam” was any e-mail sent

<sup>28</sup> See, e.g., *Lopez v. Candaele*, Civ. No. 09-0995 (C.D. Cal. Jul. 10, 2009); *DeJohn v. Temple University*, 537 F.3d 301 (3d Cir. 2008); *Doe v. Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989) (holding that the University of Michigan's discriminatory harassment policy was unconstitutionally broad); *Booher v. Board of Regents, Northern Kentucky University*, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. Jul. 21, 1998) (holding that Northern Kentucky University's sexual harassment policy was unconstitutionally broad).

<sup>29</sup> *Student Handbook*, available at <http://www.marshall.edu/student-affairs/student%20handbook%202008-09.pdf>

<sup>30</sup> “Community Respect,” *Office of Housing and Residential Life Policies and Regulations*, available at [http://housing.csusb.edu/docs/Policies\\_Regulations%2008-09.pdf](http://housing.csusb.edu/docs/Policies_Regulations%2008-09.pdf)

<sup>31</sup> E-mail from Kara Spencer to Selected MSU Faculty, September 15, 2008, available at <http://www.thefire.org/article/9992.html>

## Discussion [continued]

to more than about 20–30 recipients over two days without prior permission.<sup>33</sup> Under pressure from a coalition of thirteen civil liberties organizations, including FIRE and the Electronic Frontier Foundation, MSU eventually withdrew the charges against Spencer,<sup>34</sup> but its unconstitutional Internet usage policies were revised to be even *more* restrictive. Examples of other impermissibly restrictive Internet usage policies in force during the 2008–2009 academic year include the following:

- Winston-Salem State University prohibits the use of “offensive language” over e-mail.<sup>35</sup>
- Western Kentucky University prohibits electronically “[t]ransmitting statements, language, images or other materials that are reasonably likely to be perceived as **offensive or disparaging of others** based on race, national origin, sex, sexual orientation, age, disability, **religious or political beliefs**.”<sup>36</sup> (Emphasis added.)

### *Policies on Bias and Hate Speech*

In recent years, colleges and universities around the country have instituted policies and procedures specifically aimed at eliminating “bias” and “hate speech” on campus. These sets of policies and procedures, frequently termed “Bias Reporting

Protocols” or “Bias Incident Protocols,” often include speech codes that prohibit extensive amounts of protected expression. In addition, the protocols often infringe on students’ right to due process by permitting anonymous reporting of such speech, thereby denying students the right to confront their accusers. Moreover, universities are often heavily invested in these bias incident policies, having set up entire regulatory frameworks devoted solely to addressing them.

Earlier this year, for example, California Polytechnic State University (Cal Poly) tried to implement a bias reporting program that would have defined a bias-related incident as “any speech, act, or harassing incident or action taken by a person or group that is **perceived to be malicious** or discriminatory toward another person or group based on bias or prejudice relating to [various enumerated characteristics].”<sup>37</sup> (Emphasis added.)

The program was to feature a dozen student, faculty, and staff “advocates” who would respond to these reports of bias. A frighteningly honest comment to the student newspaper by one student advocate revealed that one of the program’s targets was the “**teacher who isn’t politically correct** or is hurtful in their actions or words.”<sup>38</sup> (Emphasis added.)

Fortunately, after information about the program drew public scrutiny, Cal

Many universities have regulations creating “free speech zones”—regulations that limit rallies, demonstrations, and speeches to small or out-of-the-way “zones” on campus.

Poly suspended the program and promised that any future bias reporting program “will not function to suppress controversial, offensive, or any other kind of protected speech.”<sup>39</sup>

Unfortunately, however, examples of these unconstitutional policies—and their attendant regulatory frameworks—abounded at colleges and universities nationwide over the past academic year. To take just two:

- At Grand Valley State University (GVSU), offensive political jokes may be subject to formal investigation. According to GVSU’s Bias Incident Protocol, a “bias incident” includes any “expressions of hate or hostility” based on a list of enumerated characteristics, including “**political affiliation**.” The protocol urges students that “it’s important to report all bias incidents—**even those intended as jokes**,” and promises that when an incident is reported, “[i]nvestigation will begin promptly.”<sup>40</sup> (Emphasis added.)

<sup>32</sup> Disciplinary Allegations Letter Against Kara Spencer, September 17, 2008, available at <http://www.thefire.org/article/9991.html>

<sup>33</sup> “Guidelines Regarding Bulk E-mailing by Internal Users of MSUNet,” available at <http://www.thefire.org/article/10152.html>

<sup>34</sup> Letter from Rick Shafer to Kara Spencer, January 22, 2009, available at <http://www.thefire.org/article/10162.html>

<sup>35</sup> “Electronic Mail Systems Policy,” available at <http://www.wssu.edu/NR/rdonlyres/vault/DOSA/Policies/ElectronicMailSystems.pdf>

<sup>36</sup> “Western Kentucky University Computing Ethics Policy,” available at <http://itdiv.wku.edu/policies/compeethics.pdf>

<sup>37</sup> Cal Poly “CARE-Net” Homepage as of May 5, 2009, available at <http://www.thefire.org/index.php/article/10585.html>

<sup>38</sup> Chris Jagger, “New CARE-Net program will allow students to report biased incidents,” *The Mustang Daily*, May 3, 2009, available at <http://www.thefire.org/index.php/article/10668.html>



- Under the University of Richmond's Bias Incident Protocol, a bias incident includes acts that "mock" or "degrade" others on the basis of characteristics such as "actual or perceived age," "gender identity or expression," "marital status," and "religious practice." Bias incidents may be reported anonymously through a program called "Silent Witness."<sup>41</sup>

### Free Speech Zones

Universities have a right to enact reasonable time, place, and manner restrictions that prevent demonstrations and speeches from unduly interfering with the educational process. For example, a university may prohibit students from demonstrating inside an academic building. It cannot, however, limit free speech to only small or remote areas of campus, or regulate

speeches and demonstrations on the basis of viewpoint.

Many universities have regulations creating "free speech zones"—regulations that limit rallies, demonstrations, and speeches to small or out-of-the-way "zones" on campus. Many also require advance notice of any demonstration, rally, or speech. Such "prior restraints" on speech are generally inconsistent with the First Amendment. From a practical standpoint, it is easy to understand why such regulations are burdensome on speech. Demonstrations and rallies are often spontaneous responses to recent or still-unfolding events. Requiring people to wait 48 or even 24 hours to hold such a demonstration may interfere with the demonstrators' message by rendering it untimely. Moreover, requiring demonstrators to obtain a permit from the university, without explicitly setting forth viewpoint-neutral crite-

ria by which permit applications will be assessed, is an invitation to administrative abuse.

For example:

- At Wichita State University, students or student groups must provide at least 72 hours notice of intent in order "to engage in first amendment activities" on campus. If the activity is expected to draw more than 40 people, it can be held only in specified "Limited Public Forums."<sup>42</sup>

- At the University of Missouri–St. Louis, "If an organization wants to hold any rallies, demonstrations, or similar activities, they should contact the Student Affairs Office at least 6 weeks before the event."<sup>43</sup>



<sup>39</sup> Press Release, "Cal Poly Suspends Reporting on 'Politically Incorrect' Faculty and Students," <http://www.thefire.org/article/10679.html>

<sup>40</sup> "Bias Incident Protocol," *Grand Valley State University Student Code*, available at <http://www.gvsu.edu/studentcode/index.cfm?id=C30FFAF9-F290-C693-ED6ABC212D5E6339>

<sup>41</sup> "Bias Incident Protocol," available at <http://commonground.richmond.edu/bias/protocol.html>

<sup>42</sup> "Use of University Campus by University Groups for First Amendment Activities," available at [http://webs.wichita.edu/inaudit/ch11\\_13.htm](http://webs.wichita.edu/inaudit/ch11_13.htm)

<sup>43</sup> "Demonstrations," *Student Organization Handbook*, available at <http://www.umsi.edu/studentlife/osl/orgforms/StudentLifeHandbook.pdf>

# Conclusion

The good news is that the types of restrictions discussed in this report can be defeated.

The quickest way to effect change is through public exposure—universities are usually unwilling to defend these policies in the face of public criticism. In the past year alone, public exposure has brought down a number of speech codes. For instance, under pressure from FIRE and student free speech activists, The College of William & Mary revised all of its unconstitutional speech codes in September 2009 and went from receiving FIRE's poorest rating as a red-light institution to its most favorable rating as a green-light institution.<sup>44</sup>

Unconstitutional policies can also be defeated in court, especially at public universities. Speech codes have been struck down in federal courts across the country, including in California, Michigan, Pennsylvania, Texas, and

Wisconsin. Any red-light policy in force at a public university is extremely vulnerable to a constitutional challenge. Moreover, as these cases become more common, administrators are losing virtually any chance of claiming that they are unaware of the law, which means that they can be held personally liable when they are responsible for their schools' violations of constitutional rights.

The suppression of free speech at American universities is a national scandal. But supporters of liberty should take heart: while many colleges and universities might seem at times to believe that they exist in a vacuum, the truth is that neither our nation's government nor its citizens look favorably upon speech codes or other restrictions on basic freedoms.



<sup>44</sup> Press Release, "Victory for Free Speech as William & Mary Dumps Speech Codes, Earns 'Green Light' Rating," available at <http://www.thefire.org/article/11170.html>



# Appendix A: States by Geographic Region

## Midwest

Illinois  
Indiana  
Iowa  
Kansas  
Michigan  
Minnesota  
Missouri  
Nebraska  
North Dakota  
Ohio  
Oklahoma  
South Dakota  
Wisconsin

## Northeast

Connecticut  
Delaware  
District of Columbia  
Maine  
Maryland  
Massachusetts  
New Hampshire  
New Jersey  
New York  
Pennsylvania  
Rhode Island  
Vermont

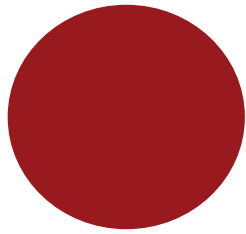
## South

Alabama  
Arkansas  
Florida  
Georgia  
Kentucky  
Louisiana  
Mississippi  
North Carolina  
South Carolina  
Tennessee  
Texas  
Virginia  
West Virginia

## West

Alaska  
Arizona  
California  
Colorado  
Hawaii  
Idaho  
Montana  
Nevada  
New Mexico  
Oregon  
Utah  
Washington

# Appendix B: Schools by Rating



## Red Light

Adams State College  
Alabama State University  
Alcorn State University  
American University  
Appalachian State University  
Arkansas State University  
Armstrong Atlantic State University  
Athens State University  
Auburn University  
Auburn University at Montgomery  
Barnard College  
Bemidji State University  
Boston College  
Boston University  
Bowdoin College  
Brandeis University  
Bridgewater State College  
Brooklyn College, City University of New York  
Brown University  
Bryn Mawr College  
Bucknell University  
California Institute of Technology  
California State University–Chico  
California State University–Fullerton  
California State University–Long Beach  
California State University–Monterey Bay  
California State University–Northridge  
California State University–Sacramento  
California State University–San Bernardino

California University of Pennsylvania  
Carleton College  
Case Western Reserve University  
Central Connecticut State University  
Central Michigan University  
Central Washington University  
Cheyney University of Pennsylvania  
Claremont McKenna College  
Clarion University of Pennsylvania  
Clark University  
Colby College  
Colgate University  
College of the Holy Cross  
Colorado College  
Columbia University  
Connecticut College  
Cornell University  
Dakota State University  
Davidson College  
Delaware State University  
Delta State University  
DePauw University  
Dickinson College  
East Carolina University  
East Stroudsburg University of Pennsylvania  
Eastern Kentucky University  
Eastern Michigan University  
Edinboro University of Pennsylvania  
Emory University  
Fitchburg State College  
Florida Gulf Coast University  
Florida International University  
Florida State University  
Fordham University  
Fort Lewis College  
Framingham State College  
Franklin & Marshall College  
Frostburg State University  
Furman University

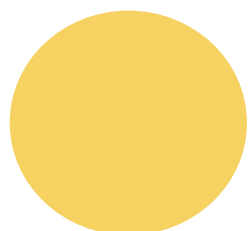
George Mason University  
 George Washington University  
 Georgetown University  
 Georgia State University  
 Gettysburg College  
 Governors State University  
 Grand Valley State University  
 Hamilton College  
 Harvard University  
 Illinois State University  
 Indiana State University  
 Indiana University–Bloomington  
 Indiana University, East  
 Indiana University of Pennsylvania  
 Indiana University–Purdue University Indianapolis  
 Indiana University, Southeast  
 Jackson State University  
 Jacksonville State University  
 Johns Hopkins University  
 Kansas State University  
 Kean University  
 Keene State College  
 Kentucky State University  
 Kenyon College  
 Kutztown University of Pennsylvania  
 Lake Superior State University  
 Lehigh University  
 Lewis-Clark State College  
 Lincoln University  
 Louisiana State University–Baton Rouge  
 Macalester College  
 Mansfield University of Pennsylvania  
 Marquette University  
 Marshall University  
 Massachusetts College of Liberal Arts  
 Massachusetts Institute of Technology  
 McNeese State University  
 Mesa State College  
 Michigan State University  
 Michigan Technological University  
 Middle Tennessee State University  
 Middlebury College  
 Millersville University of Pennsylvania  
 Mississippi State University  
 Missouri State University  
 Missouri University of Science and Technology

Montana State University–Bozeman  
 Montana Tech of The University of Montana  
 Montclair State University  
 Morehead State University  
 Mount Holyoke College  
 Murray State University  
 New York University  
 Nicholls State University  
 North Carolina Central University  
 North Carolina School of the Arts  
 North Dakota State University  
 Northeastern Illinois University  
 Northeastern University  
 Northern Arizona University  
 Northern Illinois University  
 Northern Kentucky University  
 Northwestern State University  
 Northwestern University  
 Oberlin College  
 Ohio University  
 Oregon State University  
 Princeton University  
 Purdue University  
 Rensselaer Polytechnic Institute  
 Rhode Island College  
 Rhodes College  
 Rice University  
 Richard Stockton College of New Jersey  
 Rutgers University–New Brunswick  
 Saint Olaf College  
 San Diego State University  
 San Francisco State University  
 San Jose State University  
 Sewanee, the University of the South  
 Skidmore College  
 Slippery Rock University of Pennsylvania  
 Smith College  
 Southeastern Louisiana University  
 Southern Illinois University at Carbondale  
 Southwest Minnesota State University  
 Stanford University  
 State University of New York–Albany  
 State University of New York–Brockport  
 State University of New York College of Environmental Science and Forestry  
 State University of New York–Fredonia

State University of New York–New Paltz  
State University of New York–University at Buffalo  
Stevens Institute of Technology  
Stony Brook University  
Swarthmore College  
Syracuse University  
Tennessee State University  
Texas A&M University–College Station  
Texas Southern University  
Texas Tech University  
Texas Woman’s University  
The College of New Jersey  
The Ohio State University  
Trinity College  
Troy University  
Tufts University  
Tulane University  
University of Alabama at Birmingham  
University of Alaska Anchorage  
University of Alaska Southeast  
University of Arizona  
University of Arkansas–Fayetteville  
University of California, Davis  
University of California, Irvine  
University of California, Riverside  
University of California, San Diego  
University of California, Santa Cruz  
University of Central Arkansas  
University of Chicago  
University of Cincinnati  
University of Connecticut  
University of Florida  
University of Georgia  
University of Houston  
University of Idaho  
University of Illinois at Chicago  
University of Illinois at Springfield  
University of Illinois at Urbana-Champaign  
University of Iowa  
University of Kansas  
University of Maine–Presque Isle  
University of Maryland–College Park  
University of Massachusetts Amherst  
University of Massachusetts Lowell  
University of Miami  
University of Michigan–Ann Arbor

University of Minnesota–Morris  
University of Minnesota–Twin Cities  
University of Mississippi  
University of Missouri–Columbia  
University of Missouri at St. Louis  
University of Montana  
University of Nevada, Las Vegas  
University of Nevada, Reno  
University of New Hampshire  
University of New Mexico  
University of New Orleans  
University of North Alabama  
University of North Carolina–Charlotte  
University of North Carolina–Greensboro  
University of North Dakota  
University of North Texas  
University of Northern Colorado  
University of Northern Iowa  
University of Notre Dame  
University of Oregon  
University of Richmond  
University of Rochester  
University of South Carolina (Columbia)  
University of South Florida  
University of Southern California  
University of Southern Indiana  
University of Southern Mississippi  
University of Texas at Arlington  
University of Texas at Austin  
University of Texas at El Paso  
University of Toledo  
University of Tulsa  
University of Virginia  
University of Washington  
University of West Alabama  
University of Wisconsin–Green Bay  
University of Wisconsin–La Crosse  
University of Wisconsin–Madison  
University of Wisconsin–Oshkosh  
Utah State University  
Utah Valley State College  
Valdosta State University  
Vanderbilt University  
Vassar College  
Wake Forest University  
Washington State University

Washington University in St. Louis  
 Wayne State University  
 Wesleyan University  
 West Chester University of Pennsylvania  
 West Virginia University  
 Western Carolina University  
 Western Illinois University  
 Western Kentucky University  
 Western Michigan University  
 Western State College of Colorado  
 Westfield State College  
 Whitman College  
 William Paterson University  
 Winston Salem State University  
 Worcester State College  
 Youngstown State University

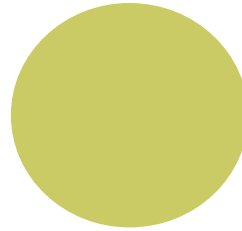


## Yellow Light

Alabama A&M University  
 Amherst College  
 Angelo State University  
 Arizona State University  
 Ball State University  
 Barnard College  
 Bates College  
 Binghamton University, State University of New York  
 Black Hills State University  
 Bloomsburg University of Pennsylvania  
 Bowling Green State University  
 California Polytechnic State University  
 California State University–Bakersfield  
 Centre College  
 Chicago State University

Clemson University  
 Colorado School of Mines  
 Colorado State University  
 Drexel University  
 Duke University  
 Eastern New Mexico University  
 Elizabeth City State University  
 Evergreen State College  
 Fayetteville State University  
 Florida Atlantic University  
 Georgia Institute of Technology  
 Harvey Mudd College  
 Haverford College  
 Henderson State University  
 Idaho State University  
 Indiana University South Bend  
 Iowa State University  
 James Madison University  
 Lafayette College  
 Lock Haven University of Pennsylvania  
 Massachusetts Institute of Technology  
 Metropolitan State University  
 Miami University of Ohio  
 New Jersey Institute of Technology  
 North Carolina A&T State University  
 North Carolina State University–Raleigh  
 Northern Michigan University  
 Occidental College  
 Oklahoma State University  
 Pennsylvania State University–University Park  
 Pitzer College  
 Pomona College  
 Saginaw Valley State University  
 Saint Cloud State University  
 Scripps College  
 Shawnee State University  
 South Dakota State University  
 Southern Methodist University  
 Temple University  
 Towson University  
 Union College  
 University of Alabama in Huntsville  
 University of Alaska Fairbanks  
 University of California, Berkeley  
 University of California, Los Angeles  
 University of California, Santa Barbara

University of Central Florida  
University of Central Missouri  
University of Colorado at Boulder  
University of Delaware  
University of Denver  
University of Hawaii at Hilo  
University of Kentucky  
University of Louisville  
University of Maine  
University of Massachusetts at Dartmouth  
University of Montevallo  
University of North Carolina–Asheville  
University of North Carolina–Chapel Hill  
University of North Carolina–Pembroke  
University of North Carolina–Wilmington  
University of Oklahoma  
University of Pittsburgh  
University of Rhode Island  
University of Southern Maine  
University of Vermont  
University of West Georgia  
University of Wisconsin–Eau Claire  
Virginia Polytechnic and State University  
Washington & Lee University  
Wellesley College  
Wichita State University  
Williams College  
Yale University



## Green Light

Carnegie Mellon University  
Cleveland State University  
Dartmouth College  
Grinnell College  
Shippensburg University of Pennsylvania  
The College of William & Mary  
University of Nebraska–Lincoln  
University of Pennsylvania  
University of South Dakota  
University of Tennessee–Knoxville  
University of Utah

## Not Rated

Bard College  
Baylor University  
Pepperdine University  
Saint Louis University  
United States Military Academy  
United States Naval Academy  
Worcester Polytechnic Institute  
Yeshiva University